LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
AUG 23 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, *Appellants*

v.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

BRIEF FOR APPELLANTS

JAMES C. TOOMEY
Barr Building

JOSEPH H. SCHNEIDER
602 7th Street, S.W.

ALBERT GINSBERG
602 7th Street, S.W.
Washington, D. C.
Attorneys for Appellants

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statutes involved	2
Questions presented for review	2
Statement of case	3
Summary of argument	4
Argument	
I. An Act Authorizing the Seizure of Private Property by Eminent Domain of Realty for the Sole Purpose of Redeveloping an Area Is Unconstitutional	5
II. A Statute Authorizing the Seizure of Private Property for Private Use Violates the Due Process Clause of the Fifth Amendment	7
III. The Redevelopment Act Does Not Authorize the Seizure of Commercial Property	11
IV. The District of Columbia Redevelopment Act of 1945 Does Not Contain Standards Sufficient to Sustain Its Validity	13
Conclusion	16
Appendix	
District of Columbia Redevelopment Act of 1945	1-14

Table of Cases

Adams v. Housing Authority of City of Daytona Beach, etc., 60 S. 2d 663	5, 6, 9
Cincinnati v. Vester, 32 F. 2d 242, Aff. 281 U. S. 439, 50 Sup. Ct. 360	10, 12
Cole v. La Grange, 28 L. Ed. 896	7
Cooley, Constitutional Limitations 1124, et seq., 8th Ed. 1923	7
Dayton Mining Co. v. Seawell, 11 Nev. 394	11
Fay v. MacFarland, 32 App. D. C. 295	12
Field v. Clark, 143 U. S. 649	13

	Page
Gaylor v. Sanitary Dist., 204 Ill. 576, 68 N. E. 522	10
General Petrol Corp. v. Hobson, 23 F. 2d 349	7
Heitmuller v. Stokes, 49 App. D. C. 391	7
Hewitt v. State Medical Examiner, 148 Cal. 590, 84 P. 39	15
Hirsh v. Block, 50 App. D. C. 56	7
Housing Auth. of City of Atlanta, et al. v. Johnson, et al., 74 S. E. 2d 891	5
In Re Tai Kee, 12 Hall. 164	15
Joran v. Woodward, 40 Me. 317	11
Lichter v. U. S., 160 Fed. 2d 329	14
Lynchburg Invest. Corp. v. Rudolph, 40 App. D. C. 29	12
MacFarland v. Elverson, 32 App. D. C. 81	12
Murray v. La Guardia, 291 N. Y. 320	6
Neufield v. O'Dwyer, 79 N.Y.S. 53	6
N. Y. City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. 2d 153, 155	5, 9
1 Nichols Eminent Domain Sect. 4:7 et seq. (1950)	7
Opinion to the Governor, 76 R. I. 249, 260	11
R. G. Lydy v. Chicago, 190 N. E. 273	15
Richmond v. Southern Bell Tel. & Tel. Co., 174 U. S. 761	12
Ryerson v. Brown, 24 Am. Rep. 464	11
Salisbury Land Improvement Co. v. Commonwealth, 215 Mass. 371, 102 N. E. 619	10
Schecter Poultry Corp. et al. v. U. S., 295 U. S. 495, 55 Sup. Ct. 837	15, 16
State ex rel. Srigley v. Woodworth, 33 Ohio App. 406, 169 N. E. 713	15
Thompson v. Consolidated Gas Util. Corp., 300 U. S. 55, 57 Sup. Ct. 364, 376	7
U. S. v. Dettra Flag Co., 86 Fed. Sup. 84, 86	13
U. S. ex rel. T.V.A. v. Welch, 327 U. S. 546, 66 Sup. Ct. 715, 718	7
Varner v. Martin, 21 W. Va. 534	11
Webster v. Susquehanna Pole Line Co., 112 Md. 416, 76 A. 254	10
Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064	15

STATUTES CITED

The District of Columbia Redevelopment Act of 1945 Code Title 5-701 et seq., 60 Stat. 790, printed herein as an Appendix.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, *Appellants*

v.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the Statutory Three-Judge Court in the United States District Court for the District of Columbia is reported at 117 Fed. Sup. 705.

JURISDICTION

The judgment of the Statutory Three-Judge Court in the United States District Court for the District of Columbia was entered on November 20, 1953. Jurisdiction of the Court rests upon the validity of the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Co-

lumbia Code, Title 5-701 et seq. (1951), and 28 U.S.C. Sec. 1253.

STATUTE INVOLVED

The District of Columbia Redevelopment Act of 1945, 60 Stat. 790, District of Columbia Code, Title 5-701, et seq. (1951) printed herein as an Appendix, is involved.

QUESTIONS PRESENTED FOR REVIEW

1. A statute enacted by Congress for the District of Columbia held constitutional, authorizes the seizure of private property by eminent domain, of realty, for the sole purpose of redeveloping an area according to the judgment of the administrators of the Act as to what a well-developed, well-balanced neighborhood would be, or merely because the property included is in an area designated by said administrators of the Act to be a slum or blighted area. May an administrative agency seize land by eminent domain solely for the purpose of redeveloping or because said property lies within an area designated by such agency as "slum" or "blighted"?

2. A statute enacted by Congress for the District of Columbia held constitutional the taking of private property for private use. Does a statute authorizing the taking of private property for private use violate the due process clause of the Fifth Amendment?

3. A statute enacted by Congress for the District of Columbia held constitutional the taking of commercial property not used for habitation wherein it provides for the discontinuance of the use for human habitation of substandard dwellings and of buildings in alleys and blighted areas and thereby eliminating such substandard housing conditions. Does such a statute empower an administrative agency to seize commercial property not used for human habitation?

4. A statute enacted by Congress for the District of Columbia held constitutional the seizure of private property

owing to technological and sociological changes, obsolete lay-outs and other factors, and conditions with respect to substandard housing and blighted areas wherein no ascertainable standards are defined except that of substandard housing. Is a statute which fails to include any ascertainable standards for guidance in carrying out its functions an unconstitutional delegation of legislative power to the administrative agency?

STATEMENT OF CASE

On August 2, 1946, Congress passed an act entitled *The District of Columbia Redevelopment Act of 1945.* It is an act to provide for the replanning and rebuilding of slum, blighted and other areas of the District of Columbia.

Through the various administrative agencies charged with the duties of carrying out this act an area was selected, a plan was adopted, accepted and approved by the Commissioners of the District of Columbia, and designated as "Project Area B". As a result of the final acceptance of the "Project Area B Plan" by the Commissioners of the District of Columbia on December 30, 1952, the Redevelopment Land Agency was then charged with the duty of assembling the land in said area and the transfer of same to a private concern who will redevelop the area.

At the time this Act was enacted, and up until the present time, the appellant's property was located at 712 Fourth Street, S.W., Washington, D. C., which property is in commercial use, being improved by a department store. No part of said premises is used as a dwelling, residence, house or for habitation.

This property is situated within the said Project Area which comprises approximately 76 acres of commercial and residential property. The commercial area borders Fourth Street, Southwest, a main thoroughfare. The boundary line of said area is carved out in an irregularly shaped pattern within the Southwest section, excluding certain commercial properties while including other commercial properties and the appellant's property.

The plan, adopted by the Commissioners of the District of Columbia, authorized the Redevelopment Land Agency to seize the real property of the Appellant, including all other properties in the designated area, which property will be demolished, leased or sold to a private redeveloping company who will replace the Appellant's commercial establishment with other or similar commercial establishments.

On or about December 30, 1952, the Commissioners of the District of Columbia, threatened to take Appellant's property in accordance with the afore-mentioned "Project Area B Plan". The Appellant, thereupon, filed a complaint questioning the constitutionality of the District of Columbia Redevelopment Act of 1945. To this complaint, the defendants filed a Motion to Dismiss on the ground that the complaint failed to state a claim upon which relief can be granted. Appellees filed in the alternative a Motion for a Summary Judgment on the ground that the Appellees are entitled to a judgment as a matter of law. Appellant filed opposition to above named motions and a counter-claim for summary judgment.

On November 20, 1953, the statutory three-judge court granted the Appellees' Motion to Dismiss and Appellant appeals from said verdict.

SUMMARY OF ARGUMENT

The District of Columbia Redevelopment Act of 1945 authorizes the seizure of private property for the sole purpose of redeveloping an area merely because said property is included within an area designated as a blighted area and such seizure is unconstitutional.

The District of Columbia Redevelopment Act of 1945 is unconstitutional because it allows seizure of private property for use other than public use and the Act therefore violates the due process clause of the Fifth Amendment of the Constitution of the United States.

The District of Columbia Redevelopment Act of 1945 is intended for the discontinuance of the use for human habi-

tation of substandard dwellings and of buildings in alleys and does not empower an administrative agency to seize Appellant's commercial property.

The District of Columbia Redevelopment Act of 1945 confers undescribed, unregulated authority and undefined powers to an administrative agency to seize in full ownership business and properties. This amounts to an unreviewable power to seize and sell whole sections of the city and said Act does not contain standards sufficient to sustain the validity of such a broad authorization.

ARGUMENT

I.

An Act Authorizing the Seizure of Private Property by Eminent Domain of Realty for the Sole Purpose of Redeveloping an Area Is Unconstitutional

The taking of private property for city redevelopment per se is not a public use.[1]

The District of Columbia Redevelopment Act of 1945 is neither a slum clearance or low cost housing program. In reality, it authorizes the seizure of private property by eminent domain of realty for such purposes as technological and sociological changes, obsolete lay-outs, blighted conditions and other factors.[2] This is wholly outside of the realm of slum clearance or low cost housing. It empowers the seizure by the Government, of one man's land to be sold to another man merely in order to create a well balanced community which better meets the Government's idea of what is appropriate or well designed. As yet, the Courts have not come to call such pleasant accomplish-

---

[1] *Adams* v. *Housing Auth. of City Daytona Beach, etc.*, 60 S. 2d 663.

Housing Auth. of City of Atlanta, et al. v. *Johnson, et al.*, 74 S.E. 2d 891.

N. Y. City Housing Auth. v. *Muller*, 270 N.Y. 333, 1 N.E. 2d 153, 155.

[2] D. C. Code § 5-701 (1951); 60 Stat. 790 Chap. 736; Page 1, Sect. 2, Appendix.

ments a public purpose which validates government seizure of private property.[3]

The New York State Legislature recognized the necessity for amending their state constitution to insert the necessary language which would allow a redevelopment act in the state which would permit the acquiring of land solely for the purpose of redeveloping an area. The necessity for such an amendment was recognized by the Courts of New York in the cases of *Murray* v. *La Guardia*[4] and *Neufield* v. *O'Dwyer*.[5] This was done by Amendment 18 to the Constitution of the State of New York. In the case of the District of Columbia, while Congress is authorized to legislate for the said District in the same fashion as the state legislature may legislate for its particular state, yet Congress is bound by the Fifth Amendment to the Constitution of the United States which has not, as yet, been amended.

An examination of the Comprehensive Plan for the District of Columbia, in its entirety, including Project Area B, discloses that the Act is a real estate promotional scheme wherein the Appellant will lose his commercial property to a redeveloping company who will replace it with similar commercial property.

The Supreme Court of Florida, in construing a similar redeveloping statute, said, in *Adams* v. *Housing Authority of City of Daytona*, supra,[6]

> "The question in this case is not simply the abatement or discontinuance of a nuisance or a blighted area. This is not simply a case of slum clearance in order to promote the public health, safety, morals and general welfare of the inhabitants and citizens of Daytona Beach. On its face it is a redevelopment plan and a mere inspection of the plan shows it to be a real estate promotion. The very words of the plan declare

[3] Fifth Amendment to the Constitution of The U. S.

[4] 291 N. Y. 320.

[5] 79 N. Y. S. 53.

[6] Supra, 60 S. 2d 663.

it to be for the purpose of acquiring title to and the ownership of several blocks of property constituting 6½ acres now used for residences to be redeveloped and sold or leased to private individuals, associations or corporations for private, commercial and industrial purposes."

II.

A Statute Authorizing the Seizure of Private Property for Private Use Violates the Due Process Clause of the Fifth Amendment

It is a universally established rule that private property cannot be constitutionally taken by eminent domain except for public use.[7]

Mr. Justice Brandeis said, in *Thompson* v. *Consolidated Gas Utility Corp.*,[8] "This Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose even though compensation be paid."

U. S. ex rel. T.V.A. v. *Welch*[9] did not repudiate this principle, but affirmed it.

Congress, in enacting the District of Columbia Redevelopment Act of 1945, specifically sets forth that certain of the land seized shall be solely for public purposes and the remainder for private purpose. Title 5-706, D. C. Code (1951); Appendix, p. 6, Sect. 7(a) and (b); 60 Stat. 795, Chap. 736, Sect. 7, is entitled, "TRANSFER, LEASE OR SALE OF REAL PROPERTY IN PROJECT AREA FOR PUBLIC AND PRIVATE USE." Subsection (a) states,

---

[7] *Hirsch* v. *Block*, 50 App. D.C. 56.
Heitmuller v. *Stokes*, 49 App. D.C. 391.
General Petrol Corp. v. *Hobon*, 23 F. 2d 349.
Cole v. *La Grange*, 28 L. Ed. 896.
Cooley, Constitutional Limit. 1124 et seq. 8th Ed. 1923.
1 Nichols—Eminent Domain Sect. 4.7 et seq. (1950).

[8] 300 U.S. 55, 57 Sup. Ct. 364, 376.

[9] 327 U.S. 546, 66 Sup. Ct. 715, 718.

> "After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer * * * by deeds to the United States or to the District of Columbia * * * those pieces of real property which, * * * are to be devoted to public uses (other than public housing) * * * such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools." * * *

Subsection (b) states,

> "The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or vacated or other than publicly owned property." * * *

The taking of the Appellant's property will be accomplished under the aforesaid subsection (b) in that his property is not to be used for any of the public purposes outlined in subsection (a) but is to be conveyed to a redeveloping company exclusively for private use, i.e. commercial property.

Under the District of Columbia Redevelopment Act of 1945, the greater portion of the properties to be seized by the Government and conveyed to the redeveloper, will be used for private purposes, such as commercial businesses, hotels, office buildings, private housing and the like. The redeveloper will own, manage and supervise this lucrative enterprise for his own use and benefit.

The Appellant is placed in the unenviable position of not being able to remodel or redevelop his own property under the provisions of the Act, and is pressed in the position of attempting to compete against large private developers for the purchase of his own property.

Because of the promotional aspects of redeveloping and the lucrativeness of such an attractive program whole

sections of a city are vested in powerful financial interests to the exclusion, detriment and loss of ownership to the individual property owner.

The Florida Supreme Court recognized this evil in *Adams* v. *Housing Authority of City of Daytona*, supra, by saying,

> "It is inconceivable that any one would seriously contend that the acquisition of real estate for the declared purposes set forth in the proposed redevelopment plan is for a public use or purpose. No one has ever heard of any corporation, association or individual going into any of the above mentioned businesses except for profit or gain. If the municipalities can be vested with any such power or authority, they can take over the entire field of enterprise without limit so long as they can find a blighted area containing sufficient real estate."

New York State, also, recognized this evil in *N. Y. City Housing Authority* v. *Muller*, supra, wherein the Court stated,

> "Nothing is better settled than the property of one individual can not, without his consent, be devoted to the private use of another, even where there is an incidental or colorable benefit to the public."

Admittedly, the removal of slum is a sound purpose. However, the seizure of the fee to realty, upon which the slum property exists, does not eliminate the slum condition. It is obvious that the seizure of the appellant's commercial property, which is concededly not slum property, for the sole reason that it lies within a close proximity to substandard housing and for the purpose of subsequent sale to a private developer, who will construct a similar commercial improvement thereon for his own use, benefit and gain, does not eliminate the slum condition existing in the other properties. The seizure of the appellant's fee does not encompass a public purpose and is repugnant to the Constitution.

The attempt to extend the concept of eminent domain, to encompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. It behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights.

The stated purpose of the government in justifying the seizure of the appellant's commercial property is that parts of the commercial area contain a high proportion of old buildings and that their ownership is diverse and that most of the stores operate on a leasehold basis and that in order to bring about the eventual recreation of the commercial area as a sound business center, the Land Agency must take the properties for redevelopment for a new, modern shopping center.

The taking of the Appellant's property because the government believes that diverse ownership and lease-hold interest are not conducive to a sound business center may seem attractive and in all probabilities it would enhance the character of the area to place said ownership under a single entity, but it is inconceivable that such pleasant accomplishments can be called a public use or purpose which would validate seizure by the sovereign of private property. The present commercial area in Southwest, including the Appellant's property, can serve the community equally as well as national chain stores, which the agencies deem preferable for the occupancy of the proposed shopping center.

When a statute authorizes a single taking for uses both public and private and does not limit the extent of the taking to the necessities of the public use, and the uses are so commingled that they cannot be separated and the taking for private use disregarded, the whole statute is unconstitutional.[10]

---

[10] *Cincinnati* v. *Vester*, 32 F. 2d 242, Aff. 281 U.S. 439;
Webster v. *Susquehanna Pole Line Co.*, 76 A. 254, 112 Md. 416.
Gaylor v. *Sanitary Dist.*, 204 Ill. 576, 68 N.E. 522.
Salisbury Land Imp. Co. v. *Commonwealth*, 102 N.E. 619, 215, Mass. 371.

> "However, by our present opinion we are not to be understood as holding that under this act a community through an agency may engage in a redevelopment project based mainly upon aesthetic view or upon considerations of economic advantage to the municipality or a combination of both."[11]

There is no doubt that Congress may delegate the power to clear slums or to delegate the full of the police power to the District Government. However, all of the conditions complained of by the government can be remedied by use of the policing regulations presently existing in the District of Columbia. There is no compelling need to seize the title to the Appellant's property to accomplish any of the purposes set forth in Section 2 of the Act. There is no necessity of seizing the title to Appellant's property because his neighbor's property is socially or economically undesirable.

> "To justify eminent domain, it must be impossible, or very difficult at least, to secure the same public uses and purposes in any other way than by authorizing the condemnation of private property."[12]

III.

The Redevelopment Act Does Not Authorize the Seizure of Commercial Property Not Used for Human Habitation

The District of Columbia Redevelopment Act of 1945 is in derogation of the common law and it therefore must be strictly construed. The statute is silent as to the taking of commercial property and an examination of the entire Act fails to disclose any reference to commercial property whatsoever. The whole tenure and purpose of the Act is directly towards housing.

---

[11] Opinion to the Governor, 76 R.I. 249, 260.

[12] *Varner* v. *Martin*, 21 W. Va. 534.
Joran v. *Woodward*, 40 Me. 317.
Ryerson v. *Brown*, 24 Am. Rep. 464.
Dayton Mining Co. v. *Seawell*, 11 Nev. 394.

In *Fay* v. *MacFarland*,[13] the Court states, "Statutes like the present, authorizing the taking of private property for public use, are to be strictly construed."

Title 5-704 of the District of Columbia Code (1951) shows that the power to acquire and assemble real property by various means is subject to and in accordance with the procedures, conditions and other provisions in the other sections of the Act. Title 5-701 of the District of Columbia Code (1951) which states the general purposes of the Act states that the purpose is to eliminate substandard housing, blighted areas, including the uses of buildings in alleys as dwellings for human habitation. Further, in the same section, the purpose is stated as being to effectuate the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such district.

The acquisition of Appellant's commercial property is not for the purpose of the elimination of the substandard housing and inhabited alleys referred to in the Act, and is beyond the scope of the authority set forth in the statute and such seizure is without due process of law.

Nowhere does the Act give the Redevelopment Land Agency specific authority to take commercial property. Even when the power has been expressly granted, the grant, itself, and the extent thereof will be construed strictly against the grantee. The latter will not be able to take the lands of another unless such rights comes clearly and unmistakably within the limits of the authority granted.

Richmond v. *Southern Bell Telephone & Telegraph Co.*, 174 US 761
MacFarland v. *Elverson*, 32 App. D.C. 81

---

[13] 32 App. D.C. 295.
Lynchburg Inv. Corp. v. *Rudolph*, 40 App. D.C. 29.
Cincinnati v. *Vester*, Supra.

It is a basic constitutional concept that the powers that are enumerated in an act restrict an administrative agency to those enumerated powers, and whatever is not plainly given is to be construed as withheld.

IV.

The District of Columbia Redevelopment Act of 1945 Does Not Contain Standards Sufficient to Sustain Its Validity

The Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization for seizing Appellant's property.

Nowhere in the Act is there a standard for the factual determination of a blighted area; obsolete lay-out; technological and sociological changes; and other factors. *Quere*, How can the judiciary determine how an administrative body determined a blighted area or obsolete lay-outs or technological or sociological changes or other factors? No standard other than "substandard housing" is defined. An examination of the definitions on page 2 of the Act (Appendix P. 2) discloses that there are no definitions of the above phrases.

States having similar redevelopment acts set out standards specifically and define such terms as blight, etc. For example, Rhode Island—*Public Law 1946, Chapt. 1802* (as amended) *Illinois Annoted Statutes Chap. 32 Sect. 550.*

In the case of *U. S.* v. *Dettra Flag Co.*, 86 Fed. Supp. 84, 88, the Court states, "Beginning with *Field* v. *Clark*, 143 U.S. 649, through to the present, the general legal dogmas which control delegation of ministerial duties have been evolved. Congress must establish definite standards to be followed and policies to be effectuated * * *. Within these standards the administrator may exercise his discretion in the application and enforcement of the statute in order to carry out its purpose. Congress may not delegate nor may an administrator usurp the legislative function. Intelligent principles and definite standards must be stated to guide, control and limit the execution of the

statute; they cannot be left to the administrator's discretion."

The Redevelopment Act which sets up no standards but merely uses general terms such as "slum," "blight" and "other factors" gives unregulated discretion to the administrative agency and there is an unconstitutional delegation of legislative power because there is an absence of any ascertainable standards for guidance in carrying out its functions.

Lichter v. *U. S.*, 160 Fed. 2d 329

The inadequacy of the statutory prescription is demonstrated by the proposed boundary line of Project Area B. There is in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned.

The Appellant's property is to be seized by the Agency while excluding a theater on the same side of the street, a block away, and a gas station across the street from the Appellant's property. Other properties in the area are excluded. *Quere*, What standard in the Act was used by the agency to justify the taking of the Appellant's property because it is situated in an area designated as "blighted" while excluding other properties?

There can be no sound, sensible, compelling or justifying reason for taking the Appellant's property in the area while excluding other properties in the same area. The Agency's attempt to justify the exclusion of a theater and a gas station is based on two grounds, (1) That the cost of acquiring the property and replacing same would be economically unsound, and (2) That, in every well-balanced community it is necessary to have a theater and gas station. If this be the justifying reason, then by the same token, the appellant's property which houses a department store, is needed. Likewise the tailor shop, hardware store, restaurant and

other businesses which now operate in the area are needed to round out a well balanced and planned community.

It is because the Act gives the Administrative Agency an unregulated and unrestricted discretion to seize property, that they can take one block, 76 acres or even the whole city. Such unregulated taking would cut the very foundation from under the sacred and inalienable right of the freedoms guaranteed the Appellant under the Constitution. An act granting such broad and undefined powers is unconstitutional.

Schecter Poultry Corp. et al. v. *U. S.*, 295 U.S. 495, 55 Sup. Ct. 837

The enactment of a statute which is lacking in definite standards places in the hands of the authorities arbitrary discretion and subjects the constitutional rights of the individual to the arbitrary discretion of local authorities, there being nothing in the statute to guide or control the exercise of the vested discretion, and control within reasonable limits is essential to constitutionality.[14]

The indiscriminate taking and the unrestricted and undefined powers of the administrative agencies are best evidenced by the fact that one city block of commercial property in the heart of downtown Washington has been designated as a "blighted area", and the balance of Southwest, approximately 344 acres, has also been declared to be a "blighted area." The lack of standards in the Act permit the agency to determine the size, shape and use of an area without any administrative review or means of questioning the propriety of the taking.

The desires of the administrative agencies to mold the city and the delegation of authority to the agencies to deter-

---

[14] *Hewitt* v. *State Medical Examiner*, 148 Cal. 590; 84 P. 39;
In Re Tai Kee, 12 Hall 164;
Yick Wo v. *Hopkins*, 118 U.S. 356, 6 S. Ct. Rep. 1064;
R. G. Lady v. *Chicago*, 190 N.E. 273;
State Ex. Rel. Srigley v. *Woodworth*, 33 Ohio App. 406, 169 N.E. 713.

mine in their own opinion what should be taken, when it should be taken, and what should be done with it, without any guide, control or standard restricting the seizure of the property at their own will supersedes the legislative power of Congress.[15] The tentacles of the agencies' unrestricted taking will reach out and engulf the entire city. Unless and until Congress, pursuant to Constitutional power, enacts specific legislation empowering the government to seize Appellant's property by use of the power of eminant domain under the District of Columbia Redevelopment Act of 1945, and said Act sets forth standards sufficient to guide the administrative agencies, said Act should be declared void and unconstitutional.

CONCLUSION

In view of the foregoing, we pray that this Court will reverse the decision of the Statutory Three-Judge Court of the District Court of the United States for the District of Columbia, and declare the District of Columbia Redevelopment Act of 1945 unconstitutional.

Respectfully submitted,

JAMES C. TOOMEY
Barr Building

JOSEPH H. SCHNEIDER
602 7th Street, S.W.

ALBERT GINSBERG
602 7th Street, S.W.
Washington, D. C.
Attorneys for Appellants

[15] *Shechter Poultry Co.* v. *U. S.*, Supra.

APPENDIX

[PUBLIC LAW 592—79TH CONGRESS]

[CHAPTER 736—2D SESSION]

[S. 1426]

AN ACT

To provide for the replanning and rebuilding of slum, blighted, and other areas of the District of Columbia and the assembly, by purchase or condemnation, of real property in such areas and the sale or lease thereof for the redevelopment of such area in accordance with said plans; and to provide for the organization of, procedure for, and the financing of such planning, acquisition, and sale or lease; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Redevelopment Act of 1945".

GENERAL PURPOSES

SEC. 2. It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in such District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the

acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in this Act, is hereby declared to be a public use.

DEFINITIONS

SEC. 3. The following terms, whenever used or referred to in this Act, shall, for the purposes of this Act and unless a different intent clearly appears from the context, be construed as follows:

(a) The term "Agency" means the District of Columbia Redevelopment Land Agency established by section 4 of this Act.

(b) "District Commissioners" means the Board of Commissioners of the District of Columbia.

(c) "Housing" includes housing, dwelling, habitation, and residence.

(d) "Housing project" means any low-rent housing (as defined in the United States Housing Act of 1937, U. S. C., title 42, ch. 8), the development or administration of which is assisted by the United States Housing Authority.

(e) "Land" includes bare or vacant land, or the land under buildings, structures, or other improvements; also water and land under water. When employed in connection with "use", as for instance, "use of land" or "land use", "land" also includes buildings, structures, and improvements existing or to be placed thereon.

(f) "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

(g) "Lessee" includes the successors or assigns and successors in title of any lessee.

(h) "Planning Commission" means the National Capital Park and Planning Commission.

(i) "Proceeds" means the money proceeds of sales or transfers by the Agency; and "net proceeds" means the gross proceeds after deducting commissions or other expenses of the sales or transfers.

(j) "Project area" is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation "project area" is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7 (a) of this Act shall have been or are to be transferred for public uses.

(k) "Public low-rent housing" means low-rent housing constructed by a public agency for families of low income, at rentals which (including the value or cost to tenants of heat, light, water, and cooking fuel) shall not exceed one-fifth of the highest net family income of families eligible for tenancy in such housing, as herein provided. The dwellings in public low-rent housing shall be available solely for such families of low income whose net family income does

not exceed the maximum net family income falling within the lowest 20 per centum by number of all family incomes in the District of Columbia, as such maximum net family income shall have been determined, or from time to time redetermined after public hearing, by the District Commissioners. At the end of one year after the enactment of this Act this definition shall be reexamined by the Commissioners for the District of Columbia and a public hearing shall be held thereon to determine whether administrative or interpretive difficulties or unsatisfactory progress in the provision of low-rent housing requires a modification thereof. Upon the conclusion of such hearing the Commissioners shall forthwith make recommendations to Congress whether said definition should be modified and, if so, to what extent.

(l) "Purchaser" includes the successors or assigns and successors in title of any purchaser.

(m) "Real property" includes land; also includes land together with the buildings, structures, fixtures, and other improvements thereon; also includes liens, estates, easements, and other interests therein; and also includes restrictions or limitations upon the use of land, buildings, or structures other than those imposed by exercise of the police power.

(n) "Redevelopment" means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of this Act, "redevelopment" also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

(o) "Redevelopment company" means a private or public corporation or body corporate, whether organized under the District of Columbia Code or the laws of the United States or any State, or an unincorporated association, trust, or other legal entity, which, by virtue of the statutes, charter, articles of incorporation, instruments of trust, or other instrument defining its powers, has the power to become a lessee or purchaser of a project area and to conform to the provisions of this Act and to perform fully and comply with the terms of the lease or sale of such area or part thereof to it.

(p) "Rentals" means the rents specified in a lease to be paid by the lessee to the Agency; "net rentals" means gross rentals after deducting taxes payable by the Agency.

(q) "Revenues" means the revenues or income received by the Agency from real property while held by it and operated or temporarily let by it and not yet leased, transferred, or sold by it; and "net revenues" means the gross revenues after deducting repair, management, maintenance, insurance, and other operating expenses and taxes paid or payable by the Agency.

(r) "Substandard housing conditions" means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of

sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia.

ESTABLISHMENT AND POWERS OF THE AGENCY

SEC. 4. (a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. Two members shall be appointed by the President and three members shall be appointed by the District Commissioners, subject to confirmation by the Senate. One of the Presidential appointees may be an official of the United States Government; one appointee of the District Commissioners may be an official of the District of Columbia Government. Each nonofficial appointee shall have been a resident of the District of Columbia for at least the five next preceding years, and shall have been engaged or employed during such time in private business or industry, or the private practice of a profession, in the District of Columbia. The terms of members shall be for five years, except that the first appointment of one of the Presidential appointees shall be for three years and the other for five years; one of the first appointments of the District Commissioners shall be for four years, one for two years, and one for one year: *Provided*, That in the event any member shall cease to hold the official position held by him at the time of his designation or appointment, such cessation shall be deemed to create a vacancy in his membership on the Agency, such vacancy, as well as all vacancies from other causes, to be filled by designation or appointment by the President or District Commissioners for the unexpired term. The members shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of $20 for each day of service at meetings or on the work of the Agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations for the exercise of its powers under this Act or governing the manner in which its business may be conducted and the powers granted to it by this Act may be exercised and enjoyed, including the selection of its chairman and other officers, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by this Act, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under this Act.

POWER TO ACQUIRE AND ASSEMBLE REAL PROPERTY

SEC. 5. (a) Subject to and in accordance with the procedures, conditions, and other provisions of this Act, the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 7 (i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of the Act entitled "An Act to provide for the acquisition of land in the District of Columbia for the use of the United States", approved March 1, 1929 (45 Stat. 1415), or Acts which may amend or supplement said Act. The title to properties acquired under this present Act shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency.

GENERAL AND PROJECT AREA REDEVELOPMENT PLANS

SEC. 6. (a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, business, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

(b) For the exercise of the powers granted to the Agency by this Act for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such

plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

(c) In relation to the location and extent of public works and utilities, public buildings, and other public uses in the general plan or in a project area plan, the Planning Commission is directed to confer with the Federal and District public officials, boards, authorities, and agencies under whose administrative jurisdictions such uses respectively fall. In the project area planning, the Planning Commission is directed to consult from time to time with the Agency, and the Agency shall be free at all times to submit to the Planning Commission suggestions regarding both the location and extent of project areas and the use and site plans of project areas.

(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in this Act for the acquisition and assembly of the real property of the area. Following such certification, no new construction shall be authorized by the District Commissioners in such area, including substantial remodeling or conversion or rebuilding, enlargement or extension or major structural improvements on existing buildings, but not including ordinary maintenance or remodeling or changes necessary to continue the occupancy.

TRANSFER, LEASE, OR SALE OF REAL PROPERTY IN PROJECT AREA FOR PUBLIC AND PRIVATE USES

SEC. 7. (a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Justice of the District Court of the United States for the District of Columbia.

(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. Said remainder may include streets or parts thereof which in accordance with the plan are to be closed or

vacated or other than publicly owned properties; and the Federal and District departments and agencies are empowered to transfer said spaces or properties to the Agency for such sums or other consideration as may be agreed upon.

(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. In the instrument, or instruments, of lease or sale, the Agency may include such other terms, conditions, and provisions as in its judgment will provide reasonable assurance of the priority of the obligations of the lease or sale and of conformance to the plan over any other obligations of the lessee or purchaser and also assurance of the financial and legal ability of the lessee or purchaser to carry out and conform to the plan and the terms and conditions of the lease or sale; also, such terms, conditions, and specifications concerning buildings, improvements, subleases, or tenancies, maintenance and management, and any other related matters as the Agency may reasonably impose or approve, including provisions whereby the obligations to carry out and conform to the project area plan shall run with the land. In the event that maximum rentals to be charged to tenants of housing be specified, provision may be made for periodic reconsideration of such rental bases, with a view to proposing modification of the project area plan with respect to such rentals.

(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; and no such consent shall be given unless the grantee or mortgagee of the purchaser obligates itself or himself by written instrument to the Agency to carry out that portion of the redevelopment plan which falls within the boundaries of the conveyed property, and also that the grantee, his or its heirs, representatives, successors, and assigns, shall have no right or power to convey, lease, or let the conveyed property or any part thereof or erect or use any building or structure erected thereon free from the obligation and requirement to conform to the approved project area redevelopment plan or approved modifications thereof.

(f) In lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. Any such sale or lease of a part or parts of a project area shall be fully subject to the provisions of subsections (c), (d), and (e) of this section.

(g) No lease or sale of any project area or portion thereof shall be made by the Agency to any public redevelopment company unless

the terms of such lease or sale shall provide greater compensation to the Agency than any offer or combination of offers based on substantially the same area and substantially the same redevelopment plan which shall be received from any responsible private sources (eligible as purchasers or lessees under this Act) within a reasonable announced period of time (not less than thirty days) after the public hearing on such proposed lease or sale. It is the intent of this provision that private enterprise as represented through a responsible private redevelopment company, individual, or partnership shall be given a preference over any public redevelopment company in such lease or sale provided such preference can be given, in the judgment of the Agency, consistently with the protection of the public interest and consistently with a purpose to resort to a public redevelopment company only in the event that private enterprise shall not reasonably be available for the development of the project area or the part thereof under consideration.

(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: *Provided*, That any such time schedule or condition shall be specified prior to the offering of the area or part thereof for lease or sale, and shall be equally binding upon any purchaser or lessee, public or private. The cost of demolition or clearance made by the Agency pursuant to this subsection shall be treated as an item of cost of the acquisition of the area.

(i) In order to facilitate the lease or sale of a project area or, in the event that the lease or sale is of parts of an area, then to facilitate the leases or sales of such parts, the Agency shall have the power to include in the cost payable by it the cost of the construction of local streets and sidewalks within the area or of grading and other local public surface or subsurface facilities necessary for shaping the area as the site of the redevelopment of the area. The Agency may arrange with the appropriate Federal or District agencies for the reimbursement of such outlays from funds or assessments raised or levied for such purposes.

HOUSING FOR DISPLACED FAMILIES

SEC. 8. (a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of subsection 6 (b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area.

(b) Families displaced by slum clearance or redevelopment under this Act shall be given preference as tenants to fill vacancies occurring

in housing owned or operated within the District of Columbia by Federal or District of Columbia governmental agencies until appropriate housing is available to such families.

ACQUISITION OF PROPERTY FROM PROSPECTIVE LESSEE OR PURCHASER

SEC. 9. As an aid in the acquisition of the real property of a project area, the Agency may accept a fund or, at an agreed value, any parcel or parcels of property within such area, from any redevelopment company or partnership or individual, subject to a provision that in the event the supplier of any such fund or the conveyor of such property shall become the purchaser of the project area or any part or parts thereof such fund or the agreed value of such property shall be credited on the purchase price of such area or part thereof and if there be an excess above the cost of acquisition of the area such excess shall be returned, and that in the event that such supplier or conveyor does not become the purchaser of such area or any part thereof, the amount of the fund or the agreed value of such property (as the case may be) shall be paid to such supplier or conveyor.

USE-VALUE APPRAISALS

SEC. 10. After the Agency shall have assembled and acquired the real propert of a project area, it shall, as an aid to it in determining the rentals and other terms upon which it will lease or the price at which it will sell the area or parts thereof, place a use-value upon each piece or tract of land within the area which, in accordance with the plan, is to be used for private uses or for low-rent housing, such use-value to be based on the planned use; and, for the purpose of this use valuation, it shall cause a use-value appraisal to be made by two or more land-value experts employed by it for the purpose; but nothing contained in this section shall be construed as requiring the Agency to base its rentals or selling prices upon such appraisal.

The aggregate use value placed, for purposes of lease or sale, upon all land, within a particular project area, leased or sold by the Agency pursuant to this Act shall be not less than one-third of the aggregate cost to the Agency of acquiring all such land (excluding the cost of old buildings destroyed and the demolition and clearance thereof).

PROTECTION OF REDEVELOPMENT PLAN

SEC. 11. (a) Previous to the execution and delivery by the Agency of a lease or conveyance to a redevelopment company or previous to the consent by the Agency to an assignment or conveyance by a lessee or purchaser to a redevelopment company, the articles or certificate of incorporation or association or charter or other basic instrument of such company shall contain provisions so defining, limiting, and regulating the exercise of the powers of the company that neither the company nor its stockholders, its officers, its directors, its members, its beneficiaries, its bondholders, or other creditors or other persons shall have any power to amend or to effect the amendment of the terms and conditions of the lease or the terms and conditions of the sale without the consent of the Agency or, in relation to the project area redevelopment plan, without the approval of any proposed modification in accordance with the provisions of section 12 of this Act; and no action of stockholders, officers, directors, bondholders, creditors, partners

or other persons, nor any reorganization, dissolution, receivership, consolidation, foreclosure, or any other change in the status or obligation of any redevelopment company, partnership, or individual in any litigation or proceeding in any Federal or other court shall effect any release or any impairment or modification of the lease or terms of sale or of the project area redevelopment plan unless such consent or approval be obtained.

(b) Redevelopment corporations may be organized under the provisions of subchapter 4 of chapter XVIII of the Code of Law for the District of Columbia approved March 3, 1901, as amended (title 29, ch. 2 of the District of Columbia Code, 1940 edition); and said corporations shall have the power to be redevelopment companies under this Act and to acquire and hold real property for the purposes set forth in this Act and to exercise all other powers granted to redevelopment companies in this Act subject to the provisions, limitations, and obligations set forth in this Act.

(c) A redevelopment company, individual, or partnership to which any project area or part thereof is leased or sold under this Act shall keep books of account of its operations of or transactions relating to such area or part thereof entirely separate and distinct from its or his accounts of and for any other project area or part thereof or any other real property or enterprise; and no lien or other interest shall be placed upon any real property in said area to secure any indebtedness or obligation of the redevelopment company, individual, or partnership incurred for or in relation to any property or enterprise outside of said area.

MODIFICATIONS OF REDEVELOPMENT PLANS

SEC. 12. An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project area boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification.

LIMITATION UPON TAX EXEMPTION

SEC. 13. Nothing contained in this Act shall be construed to authorize or require the exemption of any real property from taxation.

No real property acquired by the Agency under this Act shall be exempt from taxation by reason of such acquisition or by reason of the holding thereof by the Agency; and, in the case of any piece of real property, which, under the project area redevelopment plan, is designated to be used for Federal or District or other tax-exempt uses, the exemption of such real property from taxation granted by or in the Act entitled "An Act to define the real property exempt from taxation in the District of Columbia (Public Law 846, Seventy-seventh Congress)", or other statute, shall not commence until title thereto shall have been transferred from the Agency to the United States or the District of Columbia or to a Federal or District public agency as provided in section 7 of this Act or sold or leased to a public redevelopment company or other public corporation or tax-exempt agency and may thereby become exempt from taxation by reason of the provisions of statutes other than this present Act; the intention being that ownership or operation by the Agency in the exercise of its power under this present Act shall not, in and of itself, produce tax exemption.

ADMINISTRATIVE EXPENDITURE AND EMPLOYMENT

SEC. 14. The Agency is hereby authorized and empowered—

(a) to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than $100;

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to the Classification Act of 1923, and to section 3709 of Revised Statutes, as amended: *Provided*, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under this Act and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and the Classification Act of 1923, as amended; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of this Act.

ANNUAL REPORT

SEC. 15. On or before the last day of September of each year the Agency shall make an annual report to Congress of its operations and expenditures for the immediately preceding fiscal year, said report to include a financial balance sheet of its entire operations hereunder, and a recital in such particularity as is feasible of what the Agency proposes to do during the next succeeding fiscal year. The Agency

shall make such other and further reports, in such form and at such times as the Congress by concurrent resolution shall require.

APPROPRIATIONS AUTHORIZED

SEC. 16. (a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, whatever amounts are necessary to the Planning Commission, in addition to other funds which may be appropriated to it or private funds made available to it (the acceptance of which is hereby authorized), for the making or modification of a general or comprehensive plan and the making or modification of project area redevelopment plans and for surveys as authorized in this Act, and other administrative expenses in connection therewith. The Commission is also authorized to receive any grants that the Congress may appropriate for said purposes to the various States and municipalities and the District of Columbia.

(b) There is further authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $20,000,000, which sum shall be placed to the credit of a special trust fund to be established for the purposes hereinafter set out. There shall be deposited in the Treasury of the United States and credited to said special trust fund all revenues, rentals, proceeds, and other funds received by the Agency. The said special trust fund is hereby made available to the Agency for the purpose of acquiring real property and performing any act required or authorized by this Act. The Agency shall from time to time submit to the District Commissioners estimates of amounts for the reasonable and necessary expenses of the Agency, including personal services, and such amounts as may be approved by the District Commissioners shall be available from the said special trust fund for such expenses.

(c) As of the last day of the tenth fiscal year beginning after approval of this Act, or as of such later date as may be fixed by the Congress, there shall be transferred and credited to miscellaneous receipts of the United States the balance in the said special trust fund after deducting (a) such amount as may be necessary for the completion of any approved project the acquisition of which has been begun and (b) such amount for operating expenses of the Agency for one year as may be approved by the District Commissioners. If the balance so transferred and credited be insufficient to reimburse the United States for appropriations made pursuant to paragraph (b) of this section, then an amount equal to 50 per centum of the deficit shall be payable to the United States from revenues of the District of Columbia in installments of equal amounts for each of ten years. The District Commissioners shall include in their annual estimates of appropriations items for the payment of such installments. The aforesaid deficit shall be determined by deducting from the total of said appropriations an amount equal to (a) the fund transferred and credited to miscellaneous receipts of the United States, (b) the cost to the Agency of the real property owned by it on said date, and (c) the reserve for completion of approved projects. All subsequent proceeds, revenues, and rentals from said real property shall be credited to the said special trust fund, to be disposed of as the Congress may direct.

ACQUISITION UNDER DISTRICT OF COLUMBIA ALLEY DWELLING ACT

SEC. 17. From and after the termination of the period of one year, beginning with the date of the approval of this Act, all authority granted by the Act known as the District of Columbia Alley Dwelling Act, approved June 12, 1934, as amended, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by this Act. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Commissioners: *Provided, however*, That failure of the Planning Commission or the District Commissioners to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in said Alley Dwelling Act or in this Act shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of this Act. Any real property acquired by the Agency under the authority of the Alley Dwelling Act may be transferred or may be sold or leased by the Agency as provided in this Act for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of this Act. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to annual audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request.

AMENDMENT TO DISTRICT OF COLUMBIA ALLEY DWELLING ACT

SEC. 18. (a) Section 4 (b) of the Act known as the "District of Columbia Alley Dwelling Act", approved June 12, 1934, as amended, is further amended to read as follows:

"(b) On and after July 1, 1955, it shall be unlawful to use or occupy any alley building or structure as a dwelling in the District of Columbia."

(b) Section 6 of such Act, as amended, is further amended by striking "1947" and inserting in lieu thereof "1955".

ENCOURAGEMENT AND AID TO PRIVATE LENDING INSTITUTIONS

SEC. 19. (a) To provide for and to facilitate the improvement of housing and other improved real estate in the District of Columbia, Federal savings and loan associations of the District of Columbia and building associations and building and loan associations operating under the laws of the District of Columbia are authorized, notwith-

standing any other provision of law, to make loans for the improvement of homes or other improved real estate in the District of Columbia without security: *Provided*, That no such loan without security shall be made in a sum in excess of $2,000.

(b) Any financial institution or other lending organization operating under the laws of the United States or the District of Columbia is authorized, notwithstanding any other law or regulation, to make loans to redevelopment corporations to finance the improvement of any project area as provided in this Act. Any life-insurance company organized under the laws of the District or formed or organized under an Act of Congress is authorized, notwithstanding any other provision of law, to make loans or advances for the purpose of making repairs, alterations, additions, or improvements to homes or other buildings on improved real estate upon which it then holds a first lien to secure a loan previously made, without additional security: *Provided*, That no such loan or advance shall be made in a sum in excess of $2,000: *And provided further*, That the amount of such loan or advance when added to the balance due on the original indebtedness shall not exceed the amount originally secured by the first lien.

EFFECT UPON EXISTING STATUTES

SEC. 20. (a) In the making and approval of project area redevelopment plans, the Planning Commission and the District Commissioners shall not be limited or bound by the provisions of sections 7–108, 7–117, 7–122, and 7–301 of the District of Columbia Code (1940 edition) (Act of March 2, 1893, 27 Stat. 532, ch. 197, sec. 1; Act of May 31, 1900, 31 Stat. 248, ch. 599, sec. 2; Act of March 4, 1913, 37 Stat. 949, ch. 150; Act of March 3, 1901, 31 Stat. 1429, ch. 854, sec. 1608, as amended) relating to width, location, and length of streets and highways. No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan or part thereof unless such release, modification, or departure be adopted by the Planning Commission and approved by the District Commissioners in accordance with the provisions of section 12 of this Act or unless the modification or departure be approved by Act of Congress.

(b) Any power granted the District Commissioners or any District or Federal agency by the District of Columbia Code or by any statute may, in addition to the purposes now specified, be exercised in furtherance of the protection or carrying out of any redevelopment plan or modification made and approved under this Act.

SEPARABILITY OF PROVISIONS

SEC. 21. If any provisions of this Act or the application thereof to any body, agency, situation, or circumstances be held invalid, the remainder of the Act and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby.

SEC. 22. This Act shall take effect ninety days after the date of its approval.

Approved August 2, 1946.